

SEVENTH CIRCUIT REVIEW

www.kentlaw.edu/7cr

Volume 2, Issue 2

Spring 2007

CONTENTS

Masthead	x
About the SEVENTH CIRCUIT REVIEW	xi
Preface	xiii

Antitrust Law

<i>Relaxing the Noose Around Tying Arrangements: Reifert v. South Central Wisconsin MLS Corp. Exposes Problems with the Per Se Analysis</i>	Paul C. Mallon, Jr. 471
---	-------------------------

Civil Procedure

<i>Class(less) Action Reform</i>	Eric Y. Choi 514
----------------------------------	------------------

Copyright Law

<i>I Accept the Terms in This Agreement: Market Efficiency in Clickwrap Agreements and Open Source Software</i>	Patrick J. Mondri 540
---	-----------------------

Criminal Law - Evidence

<i>Objectively Unreasonable: The Seventh Circuit Limits Criminal Defendants' Rights Under the Confrontation Clause</i>	Gabriela M. Reyes-Noyola 563
--	------------------------------

Criminal Law - Money Laundering

- Loose Change: The Seventh Circuit Misses an Opportunity to Clarify Money Laundering Law in United States v. Haddad* Daniel L. Snedigar 605

Election Law

- Reviving the Poll Tax: The Seventh Circuit Upholds Photo ID Requirements at the Polls* Matthew W. McQuiston 632

Employment Law

- Speak No Evil? Government Employee Speech Rights in the Seventh Circuit in Light of Garcetti v. Ceballos* Tracy F. Mendonides 667

Family Law - International Child Abductions

- Domestic Violence Harms the Child! The Seventh Circuit Puts Children First in International Custody Disputes* Jennifer S. Tier 704

First Amendment

- Gaming the System: The Seventh Circuit Prefers Its Video Games Violent, Not Sexy* Michael J. Aschenbrener 737
- Mayer v. Monroe: The Seventh Circuit Sheds Freedom of Speech at the Classroom Door* Justin Nemunaitis 762

Patent Law

*Licensee Beware: The Seventh Circuit
Holds That a Patent License by Any
Other Name Is Not the Same*

Cameron R. Sneddon 796

Tax Law

*How Much Is Common Sense Worth?
What You Paid Is What It's Worth,
Except When It Comes to Debt-Equity
Swaps*

Elisabeth S. Shellan 844

SEVENTH CIRCUIT REVIEW

www.kentlaw.edu/7cr

Volume 2, Issue 2

Spring 2007

Chicago-Kent College of Law
Illinois Institute of Technology
565 West Adams Street, Chicago, Illinois 60661

Hal R. Morris
Professor

Julia R. Lissner
Executive Editor – Teaching Assistant

Editorial Staff

Michael J. Aschenbrener
Eric Y. Choi
Paul C. Mallon, Jr.
Matthew W. McQuiston
Tracy F. Mendonides
Patrick J. Mondt

Justin Nemunaitis
Gabriela M. Reyes-Noyola
Elisabeth S. Shellan
Cameron R. Sneddon
Daniel L. Snedigar
Jennifer S. Tier

© 2007 Chicago-Kent College of Law, Illinois Institute of Technology.

SEVENTH CIRCUIT REVIEW

ABOUT THE SEVENTH CIRCUIT REVIEW

Purpose

The SEVENTH CIRCUIT REVIEW is a semiannual, online journal dedicated to the analysis of recent opinions published by the United States Court of Appeals for the Seventh Circuit. The SEVENTH CIRCUIT REVIEW seeks to keep the legal community abreast of developments and trends within the Seventh Circuit and their impact on contemporary jurisprudence. The articles appearing within the SEVENTH CIRCUIT REVIEW are written and edited by Chicago-Kent College of Law students enrolled in the SEVENTH CIRCUIT REVIEW Honors Seminar.

The SEVENTH CIRCUIT REVIEW Honors Seminar

In this seminar, students author, edit, and publish the SEVENTH CIRCUIT REVIEW. The REVIEW is entirely student written and edited. During each semester, students identify cases recently decided by the Seventh Circuit to be included in the REVIEW, prepare initial drafts of case comments or case notes based on in-depth analysis of the identified cases and background research, edit these drafts, prepare final, publishable articles, integrate the individual articles into the online journal, and "defend" their case analysis at a semester-end roundtable. Each seminar student is an editor of the REVIEW and responsible for extensive editing of other articles. Substantial assistance is provided by the seminar teaching assistant, who acts as the executive editor.

The areas of case law that will be covered in each journal issue will vary, depending on those areas of law represented in the court's recently published opinions, and may include:

- Americans with Disabilities Act
- antitrust
- bankruptcy
- civil procedure
- civil rights
- constitutional law
- copyright
- corporations
- criminal law and procedure
- environmental
- ERISA
- employment law
- evidence
- immigration
- insurance
- products liability
- public welfare
- securities

This is an honors seminar. To enroll, students must meet *one* of the following criteria: (1) cumulative GPA in previous legal writing courses of 3.5 and class rank at the time of registration within top 50% of class, (2) recommendation of Legal Writing 1 and 2 professor and/or Legal Writing 4 professor, (3) Law Review membership, (4) Moot Court Honor Society membership, or (5) approval of the course instructor.



PREFACE

I have had the honor of being involved in the SEVENTH CIRCUIT REVIEW over the past three semesters, and since its inaugural issue—first as a student in the honors seminar writing a critique of a First Amendment case, and then as Executive Editor/Teaching Assistant facilitating the publication of the REVIEW. We began as a class of thirteen curious students spending hours on the task of drafting the “purpose” and explanatory statements of the SEVENTH CIRCUIT REVIEW. We discussed, grappled with, shaped, and perfected each and every word in those two paragraphs so as to guide future seminar students and inform the prospective REVIEW readers. Since then, twenty-seven more students have built upon that mission statement and put forth scholarly articles of their own in response to recent Seventh Circuit decisions.

For me, what has been the most amazing part of these past three semesters is that, at this point, as we publish Volume 2, Issue 2, our student authors are explicitly citing to the work of other SEVENTH CIRCUIT REVIEW Honors Seminar students, building upon and expanding upon the research and analysis of their predecessors and peers. And these students are not the only ones to find the SEVENTH CIRCUIT REVIEW’s articles to be valuable legal discussions. Web track reports confirm that the REVIEW is being downloaded on a regular basis, and in great numbers. And I am quite confident in predicting that the readership of the SEVENTH CIRCUIT REVIEW is only bound to increase. Recently, Chicago-Kent College of Law signed licensing agreements to make the REVIEW available on LexisNexis and Westlaw. Indeed, the SEVENTH CIRCUIT REVIEW is here to stay, and I

now know that the tedious hours my first class spent perfecting the REVIEW's mission statement were well worth it.

Before I step down as Executive Editor/Teaching Assistant and pass on the torch to Justin Nemunaitis, I would like to thank several people who have been central to the success of the SEVENTH CIRCUIT REVIEW. First, I extend my gratitude to Dean Harold Krent and the Chicago-Kent College of Law Curriculum Committee for their support of the honors seminar and publication, and for providing Chicago-Kent students with this excellent opportunity to author, edit, and publish this scholarly journal. Next, I thank John Young and Sarah Cnota of the Chicago-Kent College of Law Office of Public Affairs who are truly invaluable in the quick turn around and publication of the articles, and who have made this whole process as easy and streamlined as possible. Finally, and most importantly, I would like to thank Professor Hal Morris for his strong commitment to the SEVENTH CIRCUIT REVIEW and his undying loyalty to Chicago-Kent College of Law. This journal is a true testament to what Chicago-Kent students are capable of doing—notably, the high level of scholarly analysis they can achieve in just a semester's time. Thank you, Professor Morris, for challenging us, supporting us, enabling us, and truly enhancing our law school experience by bringing the REVIEW to life.

Though I am shortly ending my run as Executive Editor of the SEVENTH CIRCUIT REVIEW, I know this will not end my relationship with the journal. Though I will no longer be writing, editing, citing, and publishing for the REVIEW, I certainly will become a regular reader now and in the future. And, now, I hope you enjoy reading this issue as much as I have enjoyed being involved with the SEVENTH CIRCUIT REVIEW over the past three semesters.

Warmly,

Julia R. Lissner
Executive Editor, SEVENTH CIRCUIT REVIEW